***THE HONBLE SRI JUSTICE C.Y. SOMAYAJULU**

+Writ Petition No.12266 of 2004

%Dated 05.11.2007

K.Veeraprasad Rao and another

Petitioners

And

The Commissioner of Prohibition and Excise, Govt. of A.P. and another

Respondents

! Counsel for Petitioner: Mr. M.Damodar Reddy

^Counsel for Respondents: Govt. Pleader for Excise

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? Cases referred

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THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

Writ Petition No.12266 of 2004

ORDER:

1 Questioning the order of confiscation of the tractor and trailer belonging to the petitioners by the 2nd respondent, which was confirmed by the 1st respondent in an appeal preferred by them, petitioners filed this writ petition.

2 The case of the petitioners is that inasmuch as no contraband was seized from the tractor and trailer they are not liable for confiscation under the provisions of the A.P. Excise Act (the Act).

3 The case of the respondents is that on reliable information that an illegal toddy depot where toddy mixed with chloral hydrate was being sold, they went to that place and found toddy being sold in a hut and a tractor and trailer in front of that hut without any attendant there and so they seized all the bottles, tubs etc., found in the hut and tractor and trailer also as it was used for carrying the illicit toddy and issued notice to the owners of the tractor and trailer to show cause why the tractor and trailer cannot be confiscated and having considered their explanation, which is not satisfactory, they confiscated the tractor and trailer of the petitioners.

4 On my directions the learned Government Pleader produced the relevant file, which contains a translated panchanama of seizure. It reads

> We, the panchas on the call by the above stated officers, came over on the above date to the place and after present himself introduced as C.Sai Reddy C.I. of Police STF, P & E AP Hyd, and stated that they received credible information that one person established the illegal toddy depot oat the outskirts of Pachapur village and selling toddy in different villages by sending in tractor by adulterating the toddy with chloral hydrate and they wanted to check the premises and requested us to act as mediators for which we readily agreed. We and officers entered into the depot. We found one old person sitting in front of the toddy depot,

which is surrounded by right, left and back with paddy crop in front of water canal. On requisition he disclosed his name as Khaja S/o Mahboob Saab R/0 Pochapur village. On questioning about the depot in charge he stated that the paddy field and surrounding land belongs to them and one Narender of Babipet purchased a piece of land from him 3 years back and one Sattaiah S/0 Shankar Goud R/0 Gokapally village illegally running the depot. Present in the hut and on examination of the area we found 45 wooden empty cases of 24 bottles, 29 empty wooden cases without bottles, 1 wooden tub of 1000 liters and 1 wooden cases without bottles, 1 wooden tub of 1000 liters and 1 wooden tub of 2000 liters, empty, 5 wooden cases with 24 bottles of 650 ml toddy and a tractor bearing No.KA – 38 T – 107 Model 575 B 1 of Mehindra company (EN BD-12756DU) with trailer without number parked in front of the toddy depot. Efforts are made to trace out the person/owner but in vain. Hence collected a neat & clean earthen pot from the depot and taken toddy sample from each case at random and subjected for chemical test by Gifford Anti cleaning examination. After test he disclosed that the toddy is adulterated with chloral hydrate. Hence drawn 3 samples taken in neat & clean glass bottles of 650 ml with 400 ml. Samples are seized and sealed as per procedure. On further search about 3 kg of raw chloral hydrate found in a bag 2 samples of 100 ml each drawn and seized the chloral hydrate and sealed as per the procedure. Adulterated toddy is destroyed as it is not fit for human consumption. Hence seized the tractor KA 38 T – 107 with trailer, 45 wooden cases empty crates, 2 wooden tubs of 1000 & 2000 liters, 5 wooden cases with 24 bottles each and 3 kg of raw chloral hydrate and taken into possession for further action. As on search the officer could not find any permit or licence to run the depot. Hence it is a illegal depot of toddy and running it without licence is an offence under the AP Excise Act. Efforts made to locate Narender and Sattaiah but in vain.

From the above panchanama it is clear that no incriminating material like illicit toddy or toddy or empty bottles were found in the tractor and trailer at the time of their seizure. So it is clear that they were seized only on an assumption that the tractor and trailer ‘used’ for carrying the toddy were found in front of the hut, where the business in toddy was being carried on.

5 I am of the considered opinion that even assuming that the presumption on the part of the excise officials that the tractor and trailer

of the petitioners 'were used' for transporting the material that was being sold in the hut that was seized by the police, the tractor and trailer are not liable for seizure or confiscation under the Act because Section 45 of the Act reads:

> **45. Liability of certain things to confiscation:-** Whenever any offence has been committed, which is punishable under this Act, following things shall be liable to confiscation namely:
>
> (1) any intoxicant, materials, still, utensil, implements or apparatus in respect of or by means of which such offence has been committed;
> (2) any intoxicant lawfully imported, transported, or manufactured, had in possession, sold or bought along with, or in addition to, any intoxicant liable to confiscation under clause (1); and
> (3) any receptacle, package, or covering in which anything liable to confiscation under clause (1) or clause (2) is found, and the other contents, if any, of such receptacle, package or covering and any animal, vehicle, vessel, raft or other conveyance used for carrying the same; (underlining mine)

Since the words used in the earlier part of Sub Section (3) are "is found", in order to make the vehicle in which the intoxicant etc., liable for seizure, those materials must be found in that vehicle at the time of their seizure. Nothing incriminating admittedly was found in the vehicle of the petitioner at the time of their seizure. When no incriminating material is found in a vehicle at the time of search by the officials, that vehicle is not liable for seizure or confiscation under Section 45 of the Act, because had the intention of the Legislature been that the vehicles which already transported the prohibited material also are liable for confiscation, the section would have been worded differently. By the use of the words "is found" it is clear that for a vehicle being confiscated for carrying a contraband, the contraband must be found in the vehicle at the time of its seizure and that contraband must be seized from within the said vehicle. When no incriminating material is found in a vehicle it cannot be seized or confiscated on the basis that it was earlier used for transporting or carrying the contraband found

elsewhere. Since the panchanama extracted above does not disclose that any incriminating material was found in the tractor or trailer at the time of search, even assuming that the tractor and trailer were used for transporting the articles found in the hut, where illicit transaction was being carried on by others, the tractor and trailer of the petitioners are not liable for seizure or confiscation inasmuch as Section 45 of the Act being a penal provision, it has to be strictly construed and the benefit should be given to the subject. So, the respondents erred in ordering confiscation of the tractor and trailer of the petitioners.

6 Hence the Writ Petition is allowed and the order confiscating the tractor and trailer of the petitioners is quashed. No costs.

C.Y.Somayajulu, J.

05-11-2007

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